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DA 05-2241
In Reply Refer to:
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In Re: Application for New LPFM Station,
Aberdeen, NC
Calvary Chapel of the Sandhills
File No. BNPL-20010614AIW
Facility ID No. 135064

Petition for Reconsideration

Dear Mr. O'Connor:

This letter refers to the captioned application of Calvary Chapel of the Sandhills ("CCS") for a new Low Power FM ("LPFM") station in Aberdeen, North Carolina. CCS filed its application on June 14, 2001. National Lawyers Guild Center on Democratic Communications, Microradio Implementation Project, and Prometheus Radio Project ("Lawyers Guild") filed an Informal Objection against CCS's application on September 27, 2001. On March 16, 2004, the Bureau dismissed CCS's application as inadvertently accepted for filing, and dismissed the Lawyers Guild objection as moot.¹ On April 13, 2004, CCS filed a Petition for Reconsideration. For the reasons set forth below, we reinstate CCS's application, reinstate and deny the Lawyers Guild objection, and grant CCS's application.

Background

CCS and other Calvary Chapel applicants located around the country participated in the first round of the LPFM filing windows. The first LPFM filing windows permitted only local applicants to apply for new LPFM stations and limited each non-governmental applicant to a single application filing.² Item 4 requires an applicant to certify that it **either** (1) is an educational institution or organization that is physically headquartered within 16.1 kilometers (10 miles) of the proposed transmitter site; (2) is an educational institution or organization with seventy-five percent (75%) of its board members residing within 16.1 kilometers from the transmitter site; or (3) proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station. Item 5(a) requires an applicant to certify that "No party to this application has an attributable interest in any non-LPFM station, including any full power AM or FM station, FM translator station, full or low power television station, or any other media subject to the Commission's ownership restrictions." There are exceptions to this ownership

¹ *Letter to Listed Applicants*, Reference 1800B3-GDG/SW (MB Mar. 16, 2004) ("*Mar. 16 Letter*"). By the same letter a number of other applications, all filed by other Calvary Chapel applicants, were also dismissed.

² See 47 C.F.R. § 73.853(b). See also FCC Form 318, Section II, Items 4 and 5, and Instructions for FCC Form 318 at 6.

restriction for “local chapters” of a national or other large organization set forth in the attribution provisions of Section 73.858 of the Commission’s rules.³ The Instructions for FCC Form 318 summarize these exceptions as follows:

Under this provision a local chapter of a national organization will not have the attributable media interests of the national organization attributed to it, provided that the local chapter: (1) is incorporated in its local area separately from the national organization with which it is affiliated; **and** (2) has a distinct local presence and mission. To satisfy the second element of this standard, an applicant must demonstrate that it has significant membership within its local area and that it has a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.⁴

Each of the Calvary Chapel-named applicants, including CCS, submitted information to establish that it qualified for the “local chapter” exemption, certifying its local presence and submitting an exhibit to demonstrate a distinct local purpose. In dismissing the applications, the staff stated that it is undisputed that each applicant is separately incorporated and that it has a headquarters within the proposed broadcast community. However, the staff found that the submitted statements of educational purpose failed to distinguish the applicant from the other Calvary Chapel applicants which filed very similar applications for LPFM stations, or from national Calvary Chapel radio companies such as CSN International and Calvary Chapel of Twin Falls that own numerous full-service and FM translator radio stations throughout the country.⁵ Nothing in the educational purpose of the applications referenced the respective communities of license in any way or demonstrated “a local purpose that can be distinguished from the purpose of the national organization with which it is affiliated.” Without this evidence, the staff could not find that the purported “local chapter” had a distinct local presence and mission. Accordingly, the staff determined, pursuant to Section 73.853(b) and 73.858 of the Commission’s rules, that the applications were patently defective and the applications, including that of CCS, were dismissed as inadvertently accepted for filing. The informal objections that were filed against these applications were dismissed as moot.⁶ On April 13, 2004, CCS filed its Petition for Reconsideration.

Discussion

Petition for Reconsideration. In its Petition for Reconsideration, CCS argues that the Letter Decision incorrectly assumes that CCS “is part of a national organization, in which all affiliates or local chapters share the name ‘Calvary Chapel.’”⁷ CCS claims that it is not affiliated with any other Calvary Chapel organization.⁸ Because it is not affiliated with Calvary Chapel, CCS argues, its application should

³ 47 C.F.R. § 73.858, “Attribution of LPFM Station Interests.”

⁴ Instructions for FCC Form 318, pp. 5-6.

⁵ See, e.g., <http://www.csnradio.com>.

⁶ Informal objections against several of these applications filed by Lawyers Guild alleged that they did not demonstrate a “distinct local presence and mission,” and therefore, they do not fall under the exceptions to the ownership restrictions pursuant to Section 73.858 of the Commission’s rules. These objections were dismissed as moot in the letters dismissing the applications.

⁷ *CCS Petition for Reconsideration* (“*CCS Petition*”) at 1.

⁸ *Id.* at 1-2. In support of this assertion, CCS attaches to its Petition three letters. The first letter, from Pastor Ben Lawson, President of CCS, declares that CCS has “no financial or ownership ties to any other organization” and that “there is no controlling entity that has legal or financial authority over CCS.” *CCS Petition*, Exhibit 1. The second

be analyzed “under the criteria set forth in Section 73.853 of the rules, under which CCS qualifies as an LPFM applicant.”⁹ Nevertheless, CCS contends, if it is considered an affiliate it qualifies for the attribution exemption under Section 73.858(b) because it was separately incorporated and has a distinct local presence and mission in its proposed community of license. In support of this contention, CCS provided a revised Statement of Educational Purpose that details its relationship with Aberdeen, North Carolina, and outlines the proposed educational purpose of its LPFM station.¹⁰ For all these reasons, CCS argues, the Commission should reinstate its application.¹¹

CCS formally and voluntarily identifies itself with the Calvary Chapel organization and has submitted an application substantially identical to those of other Calvary Chapel applicants. While these facts are highly probative on the issue of whether CCS should be treated as a “local chapter” of Calvary Chapel, we need not resolve that matter here. We agree with CCS that even if it is considered a local chapter of a “national” Calvary Chapel organization, it qualifies for the attribution exemption of Section 73.858(b) in that the Revised Statement demonstrates that CCS has a distinct local presence and mission in Aberdeen. According to this Revised Statement, CCS provides Aberdeen with a variety of programs and activities including musical performances, holiday events, family values conferences, and free food distribution. Thus, we find that CCS has demonstrated a “distinct local presence and mission” within Aberdeen and is therefore eligible to become an LPFM station licensee.¹²

Lawyers Guild Informal Objection. Reinstatement of CCS’s application requires us to consider the Lawyers Guild’s September 27, 2001, Informal Objection, and we reinstate the Informal Objection for this purpose.¹³ This objection, however, deals with the identical issue for which the CCS application was

letter, from Pastor Michael Kestler, President of Calvary Chapel Twin Falls (“CCTF”) and Vice President of CSN International, declares that “neither CCTF nor CSN has any legal partnership or control over any of the applicants cited in the letter.” *CCS Petition*, Exhibit 2 at 1. The third letter, from Pastor Chuck Smith, Senior Pastor at Calvary Chapel Costa Mesa, Inc., who started the first “Calvary Chapel” thirty years ago, declares that other Calvary Chapel churches “operate totally and separate [sic] from any relationship to us, as they minister to their local community” and explains that “the name ‘Calvary Chapel’ would merely be used to refer to a style of ministry and teaching alone, for the sake of clarity...” *CCS Petition*, Exhibit 3 at 1, 2.

⁹ *Id.* at 2. See notes 3 and 4, *supra*, and accompanying text.

¹⁰ *Educational Purpose of Calvary Chapel of the Sandhills and Use of the Station* (filed April 15, 2004) (“*Revised Statement*”).

¹¹ *CCS Petition* at 6.

¹² As stated above, it is undisputed that CCS was separately incorporated within Aberdeen.

¹³ In its informal objection, the Lawyers Guild argues that CCS “fails to satisfactorily establish that it has a distinct local mission that can be distinguished from the purpose of the national Calvary Chapel.” *Lawyers Guild Informal Objection* at 4. To support this allegation, the Lawyers Guild references portions of what it claims is CCS’s statement of educational purpose. Neither the excerpts of that statement which the Lawyers Guild provides in the body of its objection nor the full version of the statement attached as an exhibit to the objection bear any resemblance to either the statement of educational purpose originally filed with CCS’s application or its Revised Statement. The Lawyers Guild argues that CCS should not be granted a license for a new LPFM station because, unless CCS establishes its distinct local purpose, “it must be considered an affiliate of the National Calvary Chapel under the Commission’s attribution rules.” *Id.* at 5-6. If considered an affiliate, the Lawyers Guild argues, CCS would hold attributable interests in numerous LPFM, full service, and translator stations, and the grant of an LPFM license would violate Sections 73.855 and 73.860(a) of the Commission’s rules. *Id.* The Lawyers Guild also claims that “the board of this applicant is composed of three persons, with the pastor holding 100% of the ‘entity’s’ votes.”

dismissed. Because this issue was adequately addressed on reconsideration, the objection requires no further discussion and will be denied below.

Conclusion/Actions

Accordingly, Calvary Chapel of the Sandhills' Petition for Reconsideration IS GRANTED and its application for a new LPFM station IS REINSTATED. Furthermore, the Informal Objection of the Lawyers Guild IS REINSTATED and IS DENIED, and that Calvary Chapel of the Sandhills' application (File No. BNPL-20010614AIW) for a new LPFM station IS GRANTED. The authorization will follow under separate cover.

Sincerely

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Calvary Chapel of the Sandhills
National Lawyers Guild Center on Democratic Communications

Id. at 6. According to its application, CCS's board is composed of 4 people, each holding a 25% share of the votes. *See* File No. BNPL-20010614AIW ("*CCS Application*") at Section II, Question 3.